# DEPLOYMENT CLAIMS

# OVERVIEW

- CLAIMS PROCESSING IN A DEPLOYED SITUATION
- SINGLE-SERVICE RESPONSIBILITY
- WHICH ACT TO USE?
- FOREIGN CLAIMS ACT
- SOFA CLAIMS
- COMPARISON OF FCA/SOFA CLAIMS

# CLAIMS ACTS APPLICABILITY

- **Within the United States, its territories and possessions:**
  - **Federal Tort Claims Act (FTCA)**
  - **Military Claims Act (MCA) ***
- **Everywhere else in the world:**
  - **Military Claims Act (MCA) ***
  - **Foreign Claims Act (FCA)**
  - **International Agreement Claims Act (IACA) (“SOFA Claims”)**

# CLAIMS PROCESSING DURING DEPLOYMENTS

- FOREIGN OR SOFA CLAIMS
  - WHO IS THE FOREIGN CLAIMS COMMISSION?
- SOLATIUM CLAIMS
  - GENERALLY, DON'T PAY THEM!
- PERSONAL PROPERTY CLAIMS
  - WAIT UNTIL YOU GET HOME

# REFERENCES

- DoDD 5513.3, SETTLEMENT OF CLAIMS
- DoDD 5515.8, SINGLE-SERVICE ASSIGNMENT OF RESPONSIBILITY
- AFI 51-501, TORT CLAIMS
- AFMAN 51-505, TORT CLAIMS MANUAL (DRAFT)

# SINGLE SERVICE CLAIMS RESPONSIBILITY

- WHAT GUIDANCE IS OUT THERE?
- WHICH SERVICE IS RESPONSIBLE?
- WHAT DOES “SSCR” INCLUDE?
- NAVY “FORCES AFLOAT” CLAIMS

# WHICH ACT TO USE?

- NATO COUNTRIES, PfP, JAPAN, AUSTRALIA, AND KOREA
  - "SCOPE" CLAIMS - APPLICABLE SOFA
    - U.S - FTCA OR MCA
  - "NON-SCOPE" CLAIMS - FCA
- EVERYWHERE ELSE
  - FCA FOR <u>EVERYTHING</u>

# FOREIGN CLAIMS ACT

- WHY DO WE HAVE THE FCA?
  - IMPROVES LOCAL RELATIONS
  - ALSO - HELPS KEEP OUR PEOPLE OUT OF JAIL
- CAN WE SOLICIT CLAIMS?
- WHAT ARE SOLATIUM CLAIMS?
- WHAT DO I DO ON AN EXERCISE?

# WHEN DO WE PAY?

- WHEN WE COMMIT CERTAIN ACTS
  - NONCOMBAT ACTIVITIES
  - ACTS OF MILITARY MEMBERS OR CIVILIAN EMPLOYEES
    - NOT DEPENDENTS
- SCOPE OF EMPLOYMENT RARELY RELEVANT ("INDIGENOUS EMPLOYEE")
- ONLY OUTSIDE UNITED STATES
- TWO YEAR STATUTE OF LIMITATIONS

# WHOM DO WE PAY?

- FOREIGN COUNTRIES AND POLITICAL SUBDIVISIONS
- "INHABITANT OF A FOREIGN COUNTRY"
- SOME U.S. CORPORATIONS
- SOME U.S. NATIONALS
- FOREIGN MILITARY PERSONNEL IF:
  - NOT DURING JOINT OPERATION
  - NOT INCIDENT TO ACTIVE DUTY

# WHOM DON'T WE PAY?

- INSURERS OR OTHER SUBROGEES
- U.S. DEPENDENTS (COMMAND SPONSORED OR NOT)
- U.S. CIVILIAN EMPLOYEES INJURED IN SCOPE OF EMPLOYMENT
- FOREIGN MILITARY PERSONNEL INJURED INCIDENT TO MILITARY DUTY
- ANYBODY FIGHTING US OR OUR ALLIES
- U.S. TOURISTS (NOT "INHABITANTS...")

# WHAT CLAIMS DO WE PAY?

- DEATH (WHO IS THE PROPER CLAIMANT?)
- PERSONAL DAMAGES
  - BUT NOT "MORAL DAMAGES" SUCH AS INSULT OFFENSES
- PROPERTY DAMAGE

# WHAT DON'T WE PAY? LOTS - FOR EXAMPLE:

- SOFA CLAIMS (NATO, PfP, AUSTRALIA, JAPAN, KOREA)
- PRIVATE CONTRACTUAL RELATIONSHIPS
- COMBAT- CAUSED CLAIMS
  - BUT PAY IF "PREPARING FOR, GOING TO, OR RETURNING FROM A COMBAT MISSION"
- ACTS OF INDEPENDENT CONTRACTORS (E.G., LOCKHEED TECHNICIANS)
- ACTS OF FAMILY MEMBERS, GUESTS, ETC.
- ATTORNEY FEES AND COURT COSTS
- COMPASSIONATE OR BASTARDY CLAIMS

# WHOSE LAW APPLIES?

- **THE COUNTRY WHERE THE ACT OR INCIDENT OCCURRED; EXAMPLE:**
  - **SAUDI ARABIA - "DIYAH"**
    - **BASED ON SO MANY CAMELS FOR A MOSLEM/NON-MOSLEM, MALE/FEMALE**
- **DO NOT DEDUCT COMPENSATION FROM COLLATERAL SOURCES, EXCEPT FOR INSURANCE POLICIES OUR PEOPLE BOUGHT**

# WHO CAN PAY CLAIMS, AND HOW?

- "FOREIGN CLAIMS COMMISSION"
- APPOINTED BY HIGHER LEVEL SETTLEMENT AUTHORITY
  - NOTE: IRRELEVANT IF WE DON'T HAVE SINGLE SERVICE AUTHORITY
- PAY IN LOCAL CURRENCY, IN PERSON, AND WE MUST GET SETTLEMENT AUTHORITY
- RECONSIDERATION? NOT REALLY
- DON'T GO AFTER OUR PEOPLE (MAY WANT TO USE ARTICLE 139 CLAIM)

# SOFA CLAIMS

- **ACTS OR OMISSIONS OF MEMBERS OF A FORCE OR CIVILIAN COMPONENT DONE IN THE PERFORMANCE OF OFFICIAL DUTY OR**
- **OTHER ACTS FOR WHICH A FORCE IS LEGALLY RESPONSIBLE**

# SOFA CLAIMS

- LITTLE APPLICATION TO MANY OF OUR CURRENT DEPLOYMENTS, SINCE ONLY APPLY TO NATO, PfP, AUSTRALIA, JAPAN, KOREA
- USE HOST COUNTRY LAW
- YOU WON'T BE THE SETTLEMENT AUTHORITY

# WHOM DO THEY PAY?

- "THIRD PARTIES"
- FOREIGN NATIONALS OF ANY FOREIGN COUNTRY
- SOME U.S. DEPENDENTS
- SOME HOST GOVERNMENT AGENCIES (E.G., POST OFFICE)

# WHAT CLAIMS ARE PAYABLE OR NOT?

- PAYABLE
  - PROPERTY DAMAGE, DEATH OR PERSONAL INJURY
- NOT PAYABLE
  - "WAR DAMAGE"
  - HOST COUNTRY MILITARY CLAIMS
    - UNLESS WE'RE USING THE PROPERTY
  - CONTRACTUAL CLAIMS

# WHERE MAY MOST OF OUR SOFA CLAIMS NOW ARISE?

- **IN THE UNITED STATES**
- **WHEN A NATO OR PARTNERSHIP FOR PEACE MEMBER COMMITS AN "IN-SCOPE" ACT**
  - **AUSTRALIA, JAPAN, AND KOREA SOFAs DON'T APPLY IN THE UNITED STATES**
- **U.S. ARMY HAS SINGLE SERVICE AUTHORITY**
- **WE INVESTIGATE AND REPORT**

# FCA/IACA COMPARISON

- IF A SOFA PERMITS COST-SHARING FOR "SCOPE" CLAIMS, THE FCA DOES NOT APPLY; IN THAT CASE, THE SOFA PREEMPTS THE FCA
- SOFA CLAIMS ONLY APPLY TO OFFICIAL DUTY/ LEGAL RESPONSIBILITY CLAIMS; FCA APPLIES TO EITHER DUTY OR NON-DUTY
- SOFA CLAIMS - US AND RECEIVING STATE SHARE PAYMENT; FCA - ONLY US PAYS
- ADVANCE PAYMENTS UNDER FCA, NOT UNDER SOFA (HAVE TO USE FOREIGN LAW)
- FCA - CLAIMANT MAY ASK FCC TO RECON-SIDER; SOFA - MAY SUE UNDER FOREIGN LAW
- PROPER CLAIMANTS DIFFER